

SCA/8376/2010 6/6 ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8376 of 2010

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URMISH M PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR KJ DWIVEDI for Petitioner(s) : 1,

MR JK SHAH, ASST. GOVERNMENT PLEADER for  
Respondent(s) : 1, NOTICE SERVED for Respondent(s) :  
1,3 - 6.

MR.D H PANCHAL for Respondent(s) : 2,

MR BD KARIA for Respondent(s) : 3,

MR NV ANJARIA for Respondent(s) : 6,

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CORAM :

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/12/2010

## ORAL ORDER

1. Petitioner was working as Accounts Officer and was also performing his duties as Information Officer, under the Right to Information Act, 2005(for short 'the said Act').
2. Respondent No.2, herein, approached the petitioner with an application for disclosure of certain information, under the said Act. He was a retired government servant. He had asked for information regarding his Retirement Travel Allowance and several other details. The petitioner replied to respondent No.2, vide his order dated 26.02.2008. He declined to part with certain information, citing reason that inquiry is pending with respect to the same.
3. Respondent No.2, therefore, preferred appeal, before the appellate authority. The appellate authority, vide order dated 19.04.2008, conveyed to the petitioner that, except for the information pertaining to any conscious decision of initiating of a departmental inquiry under the Gujarat State Service(Conduct) Rules, 1971 and Gujarat State Service(Discipline & Appeal)Rules, 1971 and if any charge-sheet is filed pursuant to the same, all other information to be supplied.
4. In response to the said communication, the petitioner wrote to the appellate authority, on 02.05.2008, justifying why he had not supplied the information. He also, desired to know as to when the appeal of respondent No.2 was heard, what is the order passed thereon etc.. He also demanded that the said order be supplied to him. Admittedly, however, he did not comply with the order of the appellate authority, for providing the information.
5. Respondent No.2, therefore, approached the Information Commissioner and complained about the non-supply of information despite of order of the appellate authority. The commissioner, after hearing the petitioner, by detailed speaking order, imposed penalty of Rs.25,000/- on the petitioner, in exercise of powers under Section 20(1) of the said Act. In the said order, the Commissioner came to the conclusion that the refusal to supply information was not bona fide and the explanation of the petitioner, regarding exemption under Section-8(1)(h) of the Act, was seriously flawed. It was observed that:

"15. Seen in the context of the above understanding of the scope of section 8(1)(h) the explanation of the respondent no.4 appears to be seriously flawed. In the context of the Appellate Authority's remarks cited in paragraph 9 here-in-above it also appears that the information was denied to the appellant malafidely, particularly in the context that the office of the Superintendent Engineer had informed the Accounts Officer(the respondent no.4) either to order release of payment or return the bills with his (the respondent no.4's) remarks. If the respondent no.4 received anonymous telephone calls alleging that the papers submitted by the appellate in respect of his claims were fabricated and if he (the respondent no.4) had reason to believe that there was merit in those calls and as stated by him he sought permission for lodging or police complaint against the appellant, the facts remain that no such permission was granted and that no preliminary or departmental enquiry or filing of police complaint was ordered against the appellant. Therefore, the Commission finds that the respondent no.4's apprehension that if he would have disclosed the information it could have impeded the process of prosecution is misconceived and far fetched and without any reasonable basis. It appear that the respondent no.4 appropriate to himself the role of a prosecutor, which he was not, and also that of the judge as the Public Information Officer and wrongfully denied the information to the appellant.

16. having regard to the above, the Commission does not find the explanation of the respondent no.4 to be reasonable and does not find that the respondent no.4 as the Public Information Officer discharged his obligation diligently. Relying upon the Appellate Authority's submissions and considering that the application of section 8(1)(h) in this matter was deliberately flawed with the intention of obstructing disclosure of information to the appellant, the Commission finds that this is a fit case for imposition of penalty under section 20(1) against the respondent."

6. Learned Counsel for the petitioner, vehemently, contended that the communication dated 19.04.2008 cannot be treated as an order. The same was not a speaking order. In any case, the same was passed without following the proper procedure. He, further, contended that, though, the petitioner demanded a copy of the order, it was never supplied. No fault, therefore, can be found with the petitioner, if he did not supply the information pursuant to such communication. He also contended that the information withheld was covered under Section-8(1)(h) of the Act. The Commissioner, therefore, erred in coming to the conclusion that the reasoning of the petitioner was flawed.

7. On the other hand, learned Counsel appearing for the respondents opposed the petition and supported the impugned order.

8. I have heard learned Counsel for the parties and perused the documents on record. I find that the Commissioner has passed the impugned order of penalty, primarily, on the ground that the petitioner's logic for withholding the information under Section-8(1)(h) of the Act, was seriously flawed. The Commissioner has not come to the conclusion that the petitioner has acted mala fide or with malicious motive. In that view of the matter, to penalize an officer, in exercise of discretionary powers, on the ground that his understanding of the law was flawed and in my opinion, would not be justified. Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information, even after the order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order, the petitioner was duty bound to implement the same, whether it was a speaking order or whether the appellate authority was passing the same after following the procedure or whether there was any legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty.

9. Under the circumstances, though, I find that the penalty could not have been imposed by the Commissioner, on the ground that the petitioner's understanding of the law was flawed, in the peculiar facts of the case, since the petitioner failed to comply with the order of the appellate authority, penalty imposed by the Chief Information Commissioner is reduced to Rs.10,000/-. The order of the Chief Information Commissioner, dated 26.05.2010, stands MODIFIED to the aforesaid extent.

10. This petition is DISPOSED of, accordingly.

(AKIL KURESHI, J.)

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